

## **REMARKS**

Claims 12 through 25, 33 through 37, and 43 through 45 remain pending in the present application. Claim 35 has been amended. Claim 37 has been cancelled. Basis for the amendments can be found through the specification, drawings and claims as originally filed.

### **REJECTION UNDER 35 U.S.C. §103**

The Examiner has rejected Claims 12 through 25, 33 through 37, and 43 through 45 under 35 U.S.C. §103(a), alleging them to be unpatentable over Mooty et al. (U.S. Patent No. 6,308,378) in view of DeLuca et al (U.S. Patent No. 6,591,456). The Examiner alleges that this combination would render Applicants' invention obvious to those skilled in the art.

Independent Claim 12 defines a tool with a housing, a motor within the housing, a gripping portion, and at least one blister pack having a gel containing chamber. At least one clamping member clamps the at least one blister pack to the housing. Substantially none of the vibration gel is located, in use, between the clamping member and the housing.

The Examiner alleges that Mooty et al. in view of DeLuca et al. shows Applicants' invention. The Examiner suggests that Mooty et al. illustrates all of the features except the blister pack, clamping member chambers, and cover member, which he alleges is shown by DeLuca et al.

The Mooty et al. reference cited by the Examiner illustrates a frictional gripping arrangement for a power tool.

“The gripping arrangement 114, 116, and 118 can be insert molded directly into recesses formed on the tool housing. A fixed to the surface of the tool housing using any suitable adhesive or mechanical fastener, a fixed to the tool housing using a dual injector molding process.” See column 5, lines 8-17.

Thus, Mooty et al. teach a gripping surface which is molded with, adhered to, mechanically fastened to, or dual injection molded with the surface of the housing. This being the case, Mooty et al. neither discloses or suggests the desirability of a cover to retain the gripping members onto the housing.

DeLuca et al. illustrates a cushioning device for a hand held implement such as pen or writing instrument. DeLuca et al. illustrates a cover which may be slid onto a writing instrument providing cushioning. The Examiner alleges that Mooty et al. could be modified by the teaching of DeLuca et al.

“The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests a desirability of the modification.” In re Fritch 23 U.S.P.Q. 2d 1780 at 1783 (Fed. Cir. 1992). (Emphasis added.)

Here, the Examiner alleges that Mooty et al. could be modified by DeLuca et al. However, Mooty et al. discloses their securing device as affixed onto the housing. Mooty et al. has no need for any type of cover device since their gripping device is directly affixed to the housing. To do as the Examiner suggest would be contrary to the teaching of Mooty et al. Accordingly, there would be no suggestion of the desirability to combine these references since Mooty et al. teach away from the use of a cover device.

“The Examiner is relying upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention

is rendered obvious. This court has previously stated that one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. In re Fritch, supra, 1784.”

Here, the Examiner has combined Mooty et al. and DeLuca et al. One (Mooty et al.) teaches the direct securement of a gripping member onto the housing and the other (DeLuca et al) teaches the use of a cover to hold a member onto the housing. Clearly these teachings are adverse to one another. Thus, there is no motivation to combine the two and accordingly, only through the Examiner’s hindsight does he arrive at this conclusion. Accordingly, Applicants believes Claim 12 to be patentably distinct over the art cited by the Examiner.

Independent Claim 14 discloses and claims a power tool with a housing having a handle and a motor to actuate an output of the tool. The handle has a gripping portion and a chamber enclosing a gel material extending outwardly in the gripping portion. The chamber is disposed relative to the gripping portion such that the gripping portion and the chamber are simultaneously gripped during operation of the tool.

The Mooty et al. reference relied on by the Examiner fails to disclose or suggest any type of chamber enclosing a gel material in the housing. As mentioned above, Mooty et al. discloses directly affixing the gripping member onto the housing. DeLuca et al. fails to show any type of chamber on the housing which would enclose the gel material. Accordingly, the combination cited by the Examiner fails to disclose or suggest Applicants’ invention. As mentioned above, only through hindsight reconstruction can the Examiner allege that this combination would render Applicants’ invention obvious. Accordingly, Applicants believes Claim 14 as well as Claims 15-25 which depend from Claim 14 to be patentably distinct over the art cited by the Examiner.

Independent Claim 33 claims a power tool with a housing having a handle and a motor to actuate an output member of the tool. A chamber enclosing a gel material is disposed on the handle. A cover is disposed on the handle to include an aperture through which the chamber enclosing the gel material protrudes.

As mentioned above with respect to Claim 12, the Examiner's combination fails to render Applicants' cover obvious to those skilled in the art. Accordingly, Applicants believe Claim 33 to be patentably distinct over the art cited by the Examiner. Likewise, Claim 34 which depends from Claim 33 is patentably distinct over the art cited by the Examiner.

Claim 35, like Claim 12, defines cover pieces which enable chambers to protrude through apertures in the cover. As mentioned above, the Examiner's combination fails to render Applicants' invention obvious to those skilled in the art. Accordingly, Applicants believes Claim 35 and 36 to be patentably distinct over the art cited by the Examiner.

Independent Claim 43 defines a power tool with a handle and a motor with a gel material in the region of the handle wherein the gel material protrudes outwardly through an aperture formed in the region.

As mentioned above, the Examiner's combination fails to render Applicants' invention obvious to those skilled in the art. Accordingly, Applicants believe Claim 43 and Claims 44 and 45 which depend from Claim 43 to be patentably distinct over the art cited by the Examiner.

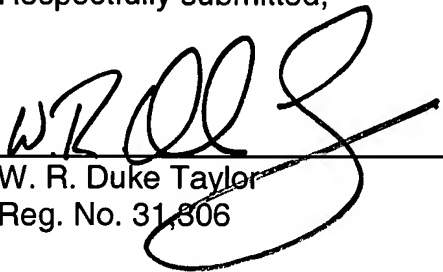
In light of the above amendments and remarks, Applicants submit that all pending claims are in condition for allowance. Accordingly, Applicants respectfully

request the Examiner to pass the case to issue at his earliest possible convenience. Should the Examiner have any questions regarding the present application, he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

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